HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTSICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22296 of 2006

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Between:

Dr. S.Jeevananda Reddy … Petitioner

AND

Government of Andhra Pradesh

and others. … Respondents

:: O R D E R ::

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Counsel for the petitioner : Sri K.S.Murthy

Counsel for respondent No.1 : Government Pleader for

Municipal Administration

Counsel for respondent No.2 : Sri T.Niranjan Reddy

Counsel for respondent No.3 : Sri S.R.Ashok,

Senior Advocate

with Sri P.Rajagopala Rao

Counsel for respondent No.4 : Sri S.V.Bhatt

13th December, 2006

Per G.S.Singhvi, C.J.

In this petition filed in public interest, the petitioner has prayed for grant of a declaration that the action of respondent Nos.1 to 3 in permitting the works pertaining to Outer Ring Road (for short, 'ORR') within a distance of 500 meters of the tank bund of Himayathsagar lake in Himayathsagar Village, which has been declared by the Andhra Pradesh Pollution Control Board (for short, 'the Board') as 'green belt'/'no development zone', is unconstitutional and, therefore, they may be directed to adhere to the conditions specified in order of consent dated 2-6-2005. It has been further prayed that respondent Nos.1 to 3 be directed to remove the material dumped within the green belt/no development zone.

The petitioner's credentials as a public-spirited person are established by the averments contained in paragraph 4 of his affidavit, which read as under:

> "4. I submit that I am a post-graduate with M.Sc. (Tech) in Geophysics, post-graduate Diploma in Applied Statistics (PGDAS), received Advanced Training in Meteorology & Oceanography at IMD/Pune Training Centre, Ph.D. in Agricultural Meteorology. I published several books/ chapters to books and several scientific articles around 200 in national and international reputed journals; and presented several popular articles in newspapers and magazines. I am a Fellow of Andhra Pradesh Academy of Sciences. I served India Meteorological Department in Pune; ICRISAT, Hyderabad; as Expert of FAO/UN (Food & Agriculture Organisation of United Nations) and Chief Technical Advisor – WMO/UN (World Meteorological Organisation of United Nations) in several developing and developed countries. After my return from UN assignments, I am voluntarily serving the cause of environment in Andhra Pradesh and more specifically in and around Andhra Pradesh. As a General Secretary and Convenor of water bodies & Convenor of all forms of pollution of "Forum For A Better Hyderabad" I filed cases in the Hon'ble High Court (W.P.No.13656 of 2003, judgment delivered on 16-10-2003; W.P.No.7848 of 2003, judgment delivered on 20-7-2004; W.P.No.7426 of 2004, judgment delivered on 13-9-2004; & W.P.No.24937 of 2004). Most of these are pertaining to water body of Hussain Sagar. I was associated with the APPCB as member of several committees. At present I have begun to take keen interest in issues regarding not only in and around Hyderabad but larger issues. These include protection of water bodies, control of pollution including Agriculture in Andhra Pradesh. With these objectives "Forum For A Sustainable

Environment" was formed and I am the founder Convenor of this umbrella organization with people and organizations having experience in different activities of environment through out the State. I am also a member of APPCB committees in controlling pollution in Andhra Pradesh as well recently was a co-opted member of the Local Area Environment Committee (LAEC) of Supreme Court Monitoring Committee (SCMC). I participated at public hearing on the Shamshabad International Airport and a Panel member of the public hearing on outer ring road phase-I."

The grievance of the petitioner is that respondent Nos.2 and 3 have permitted construction of ORR in violation of the consent given by the Board under Section 25 of Water (Prevention and Control of Pollution) Act, 1974 (for short, 'the Water Act') and Section 21 of Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Air Act'). He has referred to the commitment given by Hyderabad Urban Development Authority (for short, 'HUDA') vide communication dated 25-4-2005 for protection of water bodies including Himayathsagar lake and pleaded that the ongoing construction, which is within 500 meters distance from the bund of the lake should be stopped, else the same will result in destroying the ecology and environment of the area. The petitioner has also relied on G.O.Ms.No.111, Municipal Administration & Urban Development (UC.I) Department, dated 8-3-1996 and pleaded that the proposed construction would result in violation of the prohibition imposed by the government against construction within 10 km. of full tank level of Himayathsagar lake.

In the counter affidavit filed on behalf of respondent Nos.2 and 3 by Sri Peeyush Kumar, Project Director and Special Collector, ORR Project, the deponent has questioned the bonafides of the petitioner by asserting that even though he is a Member of the Local Area Environment Committee of the Supreme Court Monitoring Committee, the petitioner has chosen to file the writ petition. On merits, Sri Peeyush Kumar has then averred that consent was granted by the Board after threadbare deliberations and consideration of the suggestions made by the technical committee and the ongoing construction does not violate the conditions laid down by the Board. He has also referred to the environmental clearance given by the Ministry of Environment and Forests, Government of India vide letter dated 20-10-2005 and pleaded that the restriction contemplated in the consent granted by the Board is applicable only to 1400 meters length of the bund of Himayathsagar lake and not the entire length of the bund.

In his rejoinder affidavit, the petitioner has reiterated the objection to the construction of ORR within 500 meters distance of the bund of Himayathsagar lake by asserting that the total length of the bund is more than 2200 meters and the consent given by the Board clearly envisages total prohibition against any construction within 500 meters distance of the entire length of the bund. According to the petitioner, the environmental clearance given by the Ministry of Environment and Forests does not have the effect of diluting the prohibition contained in the consent given by the Board.

Before adverting to the arguments of the learned counsel, we deem it proper to notice some events which have taken place during the pendency of the writ petition.

i. While issuing notice to the respondents on 30-10-2006 and directing Sri S.V.Bhatt, Standing Counsel for the Board to accept notice, the Court directed the concerned Environmental Engineer of the Board to visit the site, prepare a

report indicating the distance between the ongoing construction activity and Himayathsagar lake bund and submit the same to the Court on 31-10-2006.

ii. On 31-10-2006, Sri S.V.Bhatt produced the report prepared by Sri C.Y.Nagesh, Environmental Engineer posted in the Regional Office of the Board, who had inspected the site along with Joint Chief Environmental Engineer of the Zonal Office. After going through the report, the Court asked some questions to Sri C.Y. Nagesh, who was present in the Court. He stated that environmental clearance given by the Ministry of Environment and Forests, Government of India envisages restriction on the construction of ORR up to a distance of 500 meters along 1400 meters stretch of the bund of Himayathsagar lake and the ongoing construction is not within the restricted zone. However, Sri K.S.Murthy, learned counsel for the petitioner laid emphasis on clause 10 of Schedule B appended to order dated 2-6-2005 passed by the Board for grant of consent to HUDA. This was controverted by Sri P.Rajagopala Rao, learned counsel representing the Project Director and Special Collector, ORR. After considering the submissions of the learned counsel, the Court directed Sri C.Y. Nagesh to get in touch with the competent authority of Hyderabad Metropolitan Water Supply and Sewerage Board and obtain an authenticated copy of the map showing the total stretch of the bund of Himayathsagar lake.

iii. On the next date of hearing i.e., 8-11-2006, the Court directed Sri K.S.Murthy, learned counsel for the petitioner and Sri S.R.Ashok, Senior Advocate appearing for the Project Director and Special Collector, ORR, to jointly inspect the disputed area along with the counsel for the Board and Sri T.Niranjan Reddy, learned counsel representing HUDA.

iv. On 13-11-2006, Sri S.R.Ashok, Senior Advocate produced a map drawn on the basis of inspection carried out by him along with Sri K.S. Murthy. A perusal of the map revealed that the total length of the bund is more than 2000 meters.

Sri K.S.Murthy heavily relied on paragraph 1.b(ii) of letter dated 25-4-2005, paragraph 1(i) of letter dated 2-5-2005 and letters dated 11-5-2005 and 23-5-2005 written by the Project Director and Special Collector to the Board and clause 10 of Schedule B appended to consent order dated 2-6-2005 issued by the Board and argued that the construction of the ORR within 500 meters distance of the entire length of the bund of Himayathsagar lake, which is more than 2200 meters should be declared as prohibited and respondent Nos.2 and 3 should be restrained from continuing the ongoing construction activity. He submitted that condition A(i) specified in the environmental clearance certificate issued by the Ministry of Environment and Forests does not have the effect of superseding the conditions incorporated in the consent order passed by the Board, which exercises statutory functions under Section 25 of the Water Act and Section 21 of the Air Act. Learned counsel pointed out that Himayathsagar lake is one of the important sources of supply of drinking water to the twin cities of Hyderabad and Secunderabad and argued that respondent Nos.2 and 3 are duty-bound to ensure that the construction of ORR does not, in any manner, adversely affect the environment and ecology surrounding the lake. He then argued that the restriction contained in the consent order passed by the Board operates along the entire stretch of the bund of Himayathsagar lake and respondent Nos.2 and 3 cannot raise any construction in violation of the said restriction. Learned counsel relied on G.O.Ms.No.111, dated 8-3-1996 issued by the State Government and argued that if the consent order is read in conjunction with that G.O., then the restriction contained in the consent order must

be treated as applicable to the entire stretch of the bund and it cannot be limited to 1400 meters merely because the environmental clearance certificate given by the Ministry of Environment and Forests, Government of India contains a reference to 1400 meters stretch.

Sri S.R.Ashok, Senior Advocate appearing for the Project Director and Special Collector, emphasized that ORR is one of the prestigious projects undertaken by HUDA for the future planned development of the twin cities and submitted that the ongoing construction may get jeopardized if the provision contained in clause 10 of Schedule B appended to the consent order is read as applicable to the entire length of the bund which is more than 2200 meters. Learned Senior Counsel submitted that the contents of letters dated 25-4-2005 and 2-5-2005 written by the Project Director and Special Collector should be read along with the plan annexed therewith and if that is done, the provision incorporated in clause 10 of Schedule B cannot be stretched to mean that the construction activity within 500 meters distance from the bund of the lake is prohibited in its entire length. Learned counsel relied on the environmental clearance certificate given by the Ministry of Environment and Forests, Government of India to support his argument that the restriction on the construction of ORR within 500 meters distance is applicable only for a length of 1400 meters of the bund and not its entire stretch. He lastly submitted that the Court may refer the matter to the technical committee of the Board for re-examination of the issue and true interpretation of clause 10 of Schedule B appended to the consent order dated 2-6-2005. Learned counsel also made a statement that respondent Nos.2 and 3 will undertake massive plantation/aforestation programme in the stretch of the bund beyond 1400 meters and this would be sufficient to protect the environment and ecology of the area. He further gave out that no construction activity will be allowed within 500 meters distance from the entire stretch of the bund of the lake.

Sri S.V.Bhatt, learned counsel for the Board submitted that the conditions incorporated in the consent order operate independently and the same should be interpreted in the backdrop of the request made by respondent Nos.2 and 3. He then submitted that if any direction is given by the Court, the competent authority of the Board will re-examine the entire matter and take appropriate decision.

We have given our most anxious consideration to the entire matter and carefully scanned the record.

With a view to protect the catchment areas of Himayathsagar and Osmansagar lakes, the Government of Andhra Pradesh issued G.O.Ms.No.111, dated 8-3-1996, whereby polluting industries, major hotels, residential colonies and other establishments, which generate pollution in the catchment areas of he lakes up to 10 km. of full tank level were prohibited. However, residential development in the residential use zone was permitted and the following steps were envisaged for protecting water flowing into the lakes:

“(a) 60% of the total area shall be kept as open space and roads

in all layouts in the villages of catchment area.

a. The land use of about 90% of the area is classified as recreational and conservation use in the Master Plan. The Hyderabad Urban Development Authority should take action for the classification of this 90% of the area as agriculture which is inclusive of horticulture and floriculture.

b. To restrict the F.S.I. to 1:0.5 in the catchment area. This measure will ensure that 90% of the area remains under agriculture, as is the practice now and ensure protection of the lakes.

c. To monitor periodically the level of different pesticides, fertilizer residues carried into the lakes. The Hyderabad Metropolitan Water Supply and Sewerage Board shall conduct such studies through J.N.T.U./Central University or any other reputed agency at regular intervals and review the results once in 6 months.

d. To prohibit polluting industries within 10 K.Ms. radius (i.e., both on upstream and down stream side of the lakes) to prevent acidification of lakes due to air pollution.

e. There shall be total prohibition of location of industraeis in the prohibited zone.

f. Andhra Pradesh Pollution Control Board shall make further study of the existing industries in the upstream and down stream of the lakes and take action under their Act."

In furtherance of the decision taken by the State Government to construct ORR from Gachibowli to Shamshabad, HUDA applied to the Board for grant of consent in terms of Section 25 of the Water Air and Section 21 of the Air Act. The application was submitted to the Board along with letter dated 5-2-2005 sent by Executive Engineer, Division No.5, Hyderabad to the Regional Manager, RR-I of the Board. The same was accompanied by copy of topo plan, EIA reports and consent fee. It is borne out from the record that Joint Chief Environmental Engineer of the Board vide his letter dated 4-4-2005 made certain queries. In his reply dated 25-4-2005, Project Director (ORR), Hyderabad clarified that HUDA is proposing to acquire the land on either side of the proposed ORR for a width of about 500 meters on the down stream and take up plantation so that developments are not permitted in future and pollution is avoided. A copy of the map showing the catchment areas of Himayathsagar and Osmansagar was annexed with letter dated 25-4-2005. The matter was then considered in the meeting of the technical committee. Thereafter, letter dated 30-4-2005 was sent by Member Secretary of the Board to the Project Director, who, vide his reply dated 2-5-2005 gave out that an alternative alignment is being finalized to ensure that a minimum distance of 500 meters away from the edge of the lake is maintained. For the sake of reference, paragraph 1(i) of that letter of the Project Director is reproduced below:

> "The alternative alignment No.3 is being finalized to ensure a minimum distance of 500 Mtrs., away from the edge of the lake. The drawing of the same is enclosed. However, technical feasibility is being worked out and this alignment will be finalized after detailed survey is completed. If it is technically not feasible, then this alignment i.e. No.3 will be connected alignment No.5 as suggested by the technical committee. In either cases the road would be shifted minimum 500 mts. away from the bund."

After examining the entire matter, the Board issued consent order subject to the conditions mentioned in Schedules A and B. Clause 10 of Schedule B, which provides for development of green belt of 500 meters width between the bund and

the road reads as under:

> "10. The proponent shall develop greenbelt of width 500 m. between the bund and the road as committed vide letter dt.25-4-2005."

Since the consent accorded by the Board was subject to condition of obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, respondent Nos.2 and 3 approached the concerned Ministry. The latter issued environmental clearance certificate vide communication dated 20-10-2005 by incorporating several conditions including the one that HUDA should declare the stretch of the proposed ORR from down stream side of the lake bund as 'no development zone' in the 500 meters gap between ORR and the bund for 1400 meters.

Having noticed the factual matrix of the case and the contents of the relevant documents, we shall now consider whether the consent given by the Board totally prohibits any construction within 500 meters distance of the entire stretch of the bund or the restriction is limited to 1400 meters stretch of the bund and whether respondent Nos.2 and 3 are entitled to continue the ongoing construction of ORR beyond 1400 meters of the length of the bund.

The concept of environment is as old as the concept of the nature itself. It is a composite term referring to conditions in which organisms consisting of air, water, food, sunlight etc. thrive and become living sources of life for all the living and non-living beings including plant life. In its narrow sense, environment denotes surroundings, whereas in its broader sense, it includes everything visible and invisible, living and non-living and their interaction in, on and above the surface of the earth. For centuries, there existed a deep rooted correlation between the nature and the culture, which finds mention in all ancient religious texts, places of worship and in the daily rituals of people's lives. In ancient times, people used to worship the nature. Cutting of trees, pollution of rivers and air were considered to be sins and crimes. The community used to impose severe punishments on those violating these integral tenets of culture and heritage. In the last two centuries, the nation has faced too many changes which have taken place with jet speed. The total estimated population of the country is more than 1100 million. The population boom has caused acute problems relating to water and air pollution, deforestation and destruction of wildlife habitats. The enormous migration of the population from rural areas to urban areas has greatly added to the ever increasing environmental problems relating to air, water, forests, wildlife etc. In many parts of India, the ground water levels have gone down by 10 to 15 times or even disappeared completely. Falling ground water levels are particularly critical in areas where there is no other access to drinkable water except through potable water wells. In cities, the problem is getting worsened by the increased demand of drinkable water. This naturally made the entire State apparatus to sit up and take remedial measures. The anxiety of the State to protect the environment, ecology, forests, wildlife and other natural resources including water is evinced from the fact that India is a signatory to the following international treaties:

1. The Antarctic Treaty (Washington, 1959) 402 UNTS 71. Entered into force 23rd June, 1961. India ratified with qualifications, 19th August, 1983.

2. Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar, 1971). 11 I.L.M. 963 (1972). Entered into force 21st December, 1975. India acceded, 1st October, 1981.

3. Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972). 11 I.L.M. 1358 (1972). Entered into force 17th December, 1975. India signed, 16th November, 1972.

4. Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973) 12 I.L.M. 1055 (1973). Entered into force 1st July, 1975. India signed, 9th July, 1974, ratified 20th July, 1976.

5. Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) (London, 1978). Entered into force 2nd October, 1983. India ratified with qualifications, 24th September, 1986.

6. Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979) 19 I.L.M. 15 (1980). Entered into force 1st November, 1983. India signed, 23rd June, 1979; ratified 4th May, 1982.

7. Convention on the Conservation of Antarctic Marine Living Resources (Canberra, 1980). 19 I.L.M. 841 (1980). Entered into force 7th April, 1982. India ratified, 17th June, 1985.

8. United Nations Convention on the Law of the Sea (Montego Bay, 1982). 21 I.L.M. 1261 (1982). Entered into force 16th November, 1994. India signed, 10th December, 1982.

9. Convention for the Protection of the Ozone Layer (Vienna, 1985). 26 I.L.M. 1529 (1987). Entered into force 22nd September, 1988. India ratified, 18th March, 1991.

10. Protocol on Substances That Deplete the Ozone Layer (Montreal, 1987). 26 I.L.M. 1550 (1987). Entered into force 1st January, 1989. India acceded, 19th June, 1992.

11. Amendments to the Montreal Protocol on Substances That Deplete the Ozone Layer (London, 1990). 30 I.L.M. 541 (1991). Entered into force 10th August, 1992. India acceded, 19th June, 1992.

12. Convention on the Control of Transboundary Movements of Hazardous Waters and Their Disposal (Basel, 1989). 28 I.L.M. 657 (1989). Entered into force 5th May, 1992. India signed, 5th March, 1990; ratified 24th June, 1992.

13. United Nations Framework Convention on Climate Change (Rio de Janeiro, 1992). 31 I.L.M. 849 (1992). Entered into force 21st March, 1994. India signed, 10th June, 1992; ratified 1st November, 1993.

14. Convention on Biological Diversity (Rio de Janeiro, 1992). 31 I.L.M. 818 (1992). Entered into force 29th December, 1993. India signed, 5th June, 1992; ratified 18th February, 1994.

15. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 1994). 33 I.L.M. 1332 (1994). Entered into force 26th December, 1995; India signed; 14th October 1994; ratified 17th December, 1996.

16. International Tropical Timber Agreement (Geneva, 1994). 33 I.L.M. 1016 (1994). Entered into force 1st January, 1997. India signed, 17th September, 1996; ratified 17th October, 1996.

17. Protocol on Environmental Protection to the Antarctica Treaty (Madrid, 1991). Entered into force 15th January, 1998.

In consonance with some of the international treaties, the Parliament enacted Article 48A, which obligates the State to protect and improve the environment and to safeguard the forests and wildlife of the country. In 2002, the Constitution (Eighty-sixth) Amendment Act was passed and Article 51-A(g) was added making it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

Article 253 of the Constitution empowers the Parliament to make laws implementing India's international obligations as well as any decision made at an international conference, association or other body. Article 253 states: 'Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'. Entry 13 of the Union List covers: 'Participation in international conferences, associations and other bodies and implementing of decisions made thereat.' In view of the broad range of issues addressed by international conventions, conferences, treaties and agreements, Article 253 read with Entry 13 apparently gives Parliament the power to enact laws on virtually any entry contained in the State List. The Parliament has used its power under Article 253 read with Entry 13 of the Union List to enact various laws for protection of environment. These include the Water Act and the Air Act.

In the last 25 years, Indian judiciary has played an active role through the mechanism of public interest litigation and acted as pater familias for ensuring full implementation of the legislative measures taken for protection of environment. The courts have given directions for implementation of the doctrine of sustainable development and a new dimension has been given to right to life guaranteed under Article 21 of the Constitution so as to encompass within its fold the right to free air and unpolluted water.

In **Rural Litigation and Entitlement Kendra v. State of U.P.**, which is popularly known as 'Dehradun quarrying case', the Supreme Court declared that Article 21 protects enjoyment of life with human dignity encompassing preservation of environment without which life cannot be enjoyed. The Supreme court expressed its concern over the mining in Himayalas and observed:

> "It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain, the top soil may be preserved without being eroded and the natural setting of the area may remain intact. We are not oblivious of the fact that natural resources have got be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. There may not be

any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation. Preservation of the environment and keeping the ecological balance unaffected is a task which not only Government, but also every citizen must undertake. It is the social application and laws remind every Indian citizen that it is his fundamental duty as enshrined in Article 51A(g) of the Constitution."

In **Subhash Kumar v. State of Bihar**, it was held that right to pure environment is a fundamental right of every citizen and is included in the right to life guaranteed under Article 21 of the Constitution.

In **Vellore Citizens' Welfare Forum v. Union of India**, the Supreme Court held that the doctrine of sustainable development is pivot which connects two wheels of progress i.e., economic development and environmental protection, and applied the precautionary principle and the principle that one who pollutes must pay for it.

In **Indian Council for Enviro-Legal Action v. Union of India**, the Supreme Court expressed concern regarding continuous degradation of ecology in coastal areas and directed the Central Government to consider the feasibility of constituting National Coastal Management Authority.

In **Samata v. State of A.P.**, the Supreme Court prohibited mining operations in the scheduled areas of Andhra Pradesh.

In **Bittu Sehgal v. Union of India**, **U.P. Pollution Control Board v. Mohan Meakins Ltd., Re Bhavani River-Shakti Sugars Ltd., M.C. Mehta v. Union of India, News Item "Hindustan Times" A.Q.F.M. Yamuna v. Central Pollution Control Board** and **Narmada Bachao Andolan etc. etc. v. Union of India**, the Supreme Court issued several directions for protection of rivers in various parts of the country and for ensuring that ecological balance is not disturbed due to operation of industries and construction of dams.

S.Jagannath v. Union of India represents an activist role of the Supreme Court, whereby directions were issued for strict compliance of environmental parameters so that ecology fragile coastal area may not be adversely affected.

In **K.M.Chinnappa, Applicant in T.N. Godavarman Thirumulpad v. Union of India**, the Supreme Court held:

"(1) By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position.

(2) Apart from the direct cost to business of complying with stricter regulatory controls, the potential liabilities for non-compliance are also increasing. These liabilities fall into five types of categories: (1) Criminal liabilities; (2) Administrative sanctions; (3) Clean up costs; (4) Civil liability, and (5) Adverse publicity.

(3) The tide of judicial consideration in environmental litigation in India

> symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well being of human beings (See World Commission on Environment and Development – Our Common Future 1987). To commemorate the tenth anniversary of the Stockholm Conference, the World Community of States assembled in Nairobi (May 10-18, 1982) to review the action taken to implement Stockholm Declaration. It expressed serious concern about the state of environment world wide and recognized the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it."

In **Narmada Bachao Andolan v. Union of India** (supra), the Supreme Court observed as under:

> "248. Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India…."

In **A.P. Pollution Control Board (II) v. Prof. M.V. Nayudu**, the Supreme Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens. The Supreme Court referred to its earlier decision with the same title in (1999) 2 SCC 718 in which the Court had discussed the 'precautionary principle', laid down the new rule of burden of proof in the matter of environmental pollution and upheld the order passed by the Board refusing permission to the private respondent, who wanted to establish an industry within 10 km. of the reservoir. The Supreme Court then noted that the concept of healthy environment as a part of fundamental right to life is finding acceptance in various countries side by side with the right to development.

We have referred to the relevant constitutional provisions and various international treaties to which India is a signatory to show the anxiety of three organs of the State to protect environment and ecology by ensuring that the natural resources like forests, water, air etc. are not destroyed by the activities of human beings. The directions issued by the Supreme Court, from time to time, in various matters including those relating to protection of rivers and lakes demonstrate the acute concern of the highest judicial forum about the wanton destruction of forests, ecology and water bodies.

If clause 10 of the consent order passed by the Board is interpreted in the light of G.O.Ms.No.111, dated 8-3-1996 issued by the Government of Andhra Pradesh, vide which severe restrictions were imposed on the construction activity within 10 km. of the full tank level of Himayathsagar and Osmansagar lakes, there appears merit in the contention of the petitioner that no construction activity can be undertaken within 500 meters distance of the entire length of the bund and that the environmental clearance certificate given by the Ministry of Environment and Forests does not impinge on or dilute clause 10 of Schedule B of the consent order. However, keeping in view the fact that the determination of the issue raised by the petitioner requires a technical evaluation of the maps submitted by HUDA, and the meaning of the word 'bund' appearing in various communications and the consent order is not clear, we refrain from expressing any conclusive opinion in the matter and feel that ends of justice would be met by directing the Board to refer the matter to the

technical committee and take appropriate decision in the matter keeping in view the report of the committee and the restrictions incorporated in G.O.Ms.No.111, dated 8-3-1996.

In the result, the writ petition is disposed of with the following directions:

1. Within seven days from today, the Board shall refer the entire issue relating to true interpretation of clause 10 of Schedule B appended to the consent order, which provides for development of green belt of 500 meters width between the bund and the road, to the technical committee, which had earlier examined the matter.

2. Within next seven days, the technical committee shall submit its report. While doing so, the technical committee shall examine the records produced by HUDA and also keep in view the restrictions contained in G.O.Ms.No.111, dated 8-3-1996.

3. The technical committee shall fix a date on which the petitioner and representative of HUDA may appear and submit their respective view points.

4. Within three days of the receipt of the report of the technical committee, the Board shall issue appropriate order clarifying the true ambit and scope of clause 10 of the consent order.

5. If the petitioner feels aggrieved by the order of the Board, he shall be free to avail appropriate legal remedy.

As a sequel to disposal of the writ petition, WPMP.No.28311 of 2006 filed by the petitioner for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

13th December, 2006.

C.V.NAGARJUNA REDDY, J.

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